

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION**

MDL No. 2419

Docket No.: 1:13-md-02419-RWZ

THIS DOCUMENT RELATES TO:

**Armetta, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14022-RWZ**

**Bowman, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14028-RWZ**

**Davis, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14033-RWZ**

**Dreich, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14029-RWZ**

**Farthing, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14036-RWZ**

**Kashi, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14026-RWZ**

**Torbeck, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14023-RWZ**

**Handy, et al. v. Box Hill Surgery Center,
LLC, et al.
No. 1:14-cv-14019-RWZ**

**NON-PARTY BARBARA WAGNER’S MOTION FOR LEAVE TO
FILE REPLY RE: MOTION FOR PROTECTIVE ORDER
REGARDING PLAINTIFFS’ SUBPOENA AND AMENDED
NOTICE OF DEPOSITION *DUCES TECUM* [DKT. 2953]**

Non-party Barbara Wagner, by and through her attorneys, R. Scott Krause, Ashley L. Marucci and Eccleston and Wolf, P.C., moves for permission to file a Reply to Plaintiffs’ Opposition to her Motion for Protective Order (Docket No. 2953). In support thereof, Ms. Wagner states as follows:

1. On June 14, 2016, Plaintiffs in the above-referenced cases issued a Subpoena and Amended Notice of Deposition *Duces Tecum* to non-party Barbara Wagner.

2. Attachment A to the Amended Notice of Deposition *Duces Tecum* requested a broad scope of documents and information that relate solely to practices and procedures in place by Ms. Wagner’s employer, Harford County Ambulatory Surgical Center, LLC (“HCASC”), for ordering preservative-free methylprednisolone acetate (“MPA”) from New England Compounding Center (“NECC”). Although HCASC is not a party to any cases in the MDL, it is a Defendant in several cases in the Circuit Court for Harford County, Maryland arising from the same circumstances involving allegedly tainted MPA from NECC administered to patients.

3. Under the circumstances, and without being able to reach a resolution with Plaintiffs’ counsel, Ms. Wagner filed a Motion for Protective Order on June 23, 2016, seeking to preclude Plaintiffs from requesting documents and information in her fact witness deposition that pertain solely to policies and procedures utilized by HCASC in obtaining MPA from NECC.

4. On July 5, 2016, Plaintiffs filed an Opposition to the Motion for Protective Order.

5. Ms. Wagner seeks leave to file a Reply to Plaintiff’s Opposition to respond to arguments raised by Plaintiffs regarding the appropriate analysis of applicable law, to clarify Ms.

Wagner's position on her objections to the scope of requested documents and testimony at her deposition and to respond to Plaintiffs' assertions regarding the relevance of the scope of requested documents and information from Ms. Wagner.

6. The proposed Reply is attached as Exhibit 1 to this Motion.

Respectfully submitted,

/s/ R. Scott Krause

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Attorneys for Non-party Barbara Wagner

CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the foregoing Non-Party Barbara Wagner's Motion for Leave to File Reply Re: Motion for Protective Order Regarding Plaintiffs' Subpoena and Amended Notice of Deposition *Duces Tecum* was served on all counsel of record by virtue of the Court's electronic filing system this 11th day of July, 2016.

/s/ Ashley L. Marucci

Ashley L. Marucci